

**REMARKS OF SENATOR TOM HARKIN (D-IA)
ON
CHECKS AND BALANCES AND THE “NUCLEAR OPTION”**

AS PREPARED FOR DELIVERY ON THE SENATE FLOOR

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“Mr. President, by triggering the nuclear option, the Majority Leader would unleash forces that he would regret, and that everyone who loves this great nation and its system of checks and balances would regret. There is no question that, by breaking the rules, the majority party would gain short-term advantage. They would be able to confirm every one of their judicial nominees, no matter how radical or out of the mainstream.

“But the long-term, destructive consequences of triggering the nuclear option would be profound for our system of government. For more than two centuries, Senate rules and traditions have respected the rights of the minority. That would be destroyed.

“For more than two centuries, thanks to those minority rights, the Senate has been a force for compromise, moderation, and reason. That would be destroyed.

“For more than two centuries, the minority’s power in the Senate has been essential to America’s system of checks and balances. That would be destroyed.

“And something else of great importance would be destroyed: Respect for rules.

“Mr. President, playing by the rules is the American way. It is one of our core values. From childhood, we are taught to respect the rules, to follow the rules, to play by the rules. We are taught that it is dishonorable to break the rules or to change the rules in the middle of the game, especially to gain an advantage or to win. Ask any child, and he or she will tell you that breaking the rules, or changing the rules in the middle of the game, is not only unfair; it is wrong.

“America is a great country because playing by the rules, and respecting rules, is a core value. It is a way of life. It is at the heart of our athletics, our business dealings, and our way of government. It is no exaggeration to say that if you destroy the idea of playing by the rules, then you invite distrust, disorder, and the disintegration of the American social fabric. You invite chaos; and chaos invites tyranny.

“And this is exactly why the Republican leadership’s plan to resort to the nuclear option is so dangerous. Since 1790, the filibuster has been used in the Senate countless hundreds of times. Nearly 100 years ago, the Senate passed Rule 22, codifying the right of extended debate. It takes 67 votes to change the Senate rules, and 60 votes to cut off debate. Those are the rules. They are deeply conservative rules – rules that have been respected and honored for nearly a century. Until now.

“Now, the Republican leadership is unhappy because a small number of judges – all of them I consider far out of the mainstream -- have been filibustered by the minority. They are unhappy because they have been able to confirm only 95 percent of the President’s judicial nominees, and not 100 percent. This compares, by the way,

to only an 80 percent confirmation rate during the Clinton administration. The Republicans blocked more than 60 Clinton judicial nominees, including Bonnie Campbell of Iowa. And most of those nominees were blocked in the Judiciary Committee by just one Senator.

“Does the Republican leadership celebrate the fact that, playing by the rules, they won 95 percent of the time? Do they now play by the rules and gather the votes necessary to change Rule 22, governing filibusters? No.

“They will make up their own rule – a new rule that will allow them, henceforth, to change any rule at any time for any reason by only 51 votes. In other words, once the nuclear option is detonated and a new Senate precedent is established, this body will be subject to the whim of any group of 51 Senators who want to impose their will without any provision for extended debate.

“Make no mistake: This will be the end of the Senate as we know it.

“And how ironic that this is being done by Senators who call themselves conservative! The truth is that resort to the nuclear option – breaking the rules, making up new rules convenient to the leadership – is a radical, unprecedented action, with consequences that no one can predict. Because, once you break the rules and start making up new rules as you go along, you sow the seeds of anarchy, of chaos. You create an atmosphere of ‘anything goes’ and ‘the end justifies the means.’

“We have already seen this in the actions of the House Majority Leader, Tom DeLay. We have an honored tradition that congressional redistricting occurs every 10 years after the decennial census. But Mr. DeLay wanted to increase his majority in the House. So what did he do? He tore up the rules. He made up new rules, Tom DeLay’s rules. But the *real* Tom DeLay rule is this: Anything goes. The end justifies the means. Situational ethics. And I fear that we are about to adopt that Tom DeLay rule here in the Senate.

“Mr. President, this is profoundly bad news for this institution that we love, the United States Senate. But I am also concerned about the message this sends to business people, to husbands and wives, and to our children. The message is: If our national leaders can break the rules as a matter of convenience, if they can write their own rules and impose those new rules on others, then maybe it’s OK for everyone behave just like that.

“This is a deeply disturbing prospect. I implore the distinguished Majority Leader, Mr. Frist, to consider the law of unintended consequences. He is threatening to break Rule 22 in order to pass 100 percent of the President’s judicial nominees. But once the rule is destroyed, and once the Majority Leader imposes a new rule to his liking, then who is to say where this will lead? It will be like an out-of-control virus. If 51 Senators can change any rule at any time for any reason, then anything is possible.

“The metaphor that Senators are using is “nuclear option.” And that is appropriate. There may also be another metaphor: The Majority Leader is planning to let the genie out of the bottle. And there will be no putting that genie back in the bottle. It will wreak destruction in ways that no one, now, can predict or foresee.

“I don’t know why the Majority Leader doing this. But perhaps what we confront today is an attempt to seize absolute power and unchecked control of all three branches of government. The Republicans already control the Executive branch. A majority of Supreme Court justices were Republican nominees, and that is also true of a majority of judges on our Courts of Appeal and Circuit Courts; indeed, there is a Republican majority on 10 of

the 12 Circuit Courts. Republicans have an iron grip on the House of Representatives. And they have a 55-seat majority in the Senate.

“Only one barrier now stands in the way of the Republican Party seizing absolute control of this government, and that is the right of the minority in the Senate to filibuster. By unleashing the nuclear option, the Republican leadership would crush this last remaining check on its power.

“The filibuster is a more-than-200-year-old tradition in the Senate. It has withstood the test of time.

“Mr. President, I do not believe that the nuclear option reflects the desires or values of the American people. Americans are extremely wary of one-party dominance and control – this is a prime reason why so many voters split their ballots. In the election last November, the Republicans won the White House with less than 51 percent of the popular vote. The Republicans have a 52 percent majority in the House and a 55 percent majority in the Senate. But they now want to seize 100 percent control of this government, including the 3rd branch—the judicial branch.

“That is not healthy for our great country. It is not healthy for our democracy. And I do not believe for one minute that this power-grab reflects the wishes of the American people.

“When it comes to government, there are certain values and principles that the vast majority of Americans share. We prize our system of checks and balances. We respect minority rights and dissent, and we want to ensure that minorities are protected. We understand the danger of majorities acting without check or restraint, running roughshod over those who disagree. As a well-known minister recently told me: “Democracy exists not just when the majority rules, but when the minority is absolutely safe.”

“Most Americans understand that checks and balances are the key to preserving our liberty.

“As James Madison wrote, “The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.”

“But that is exactly the goal of the Republican leadership, today. They seek “the accumulation of all powers, legislative, executive, and judiciary in the same hands” – *their* hands. And this is profoundly dangerous.

“Mr. President, by resorting to the nuclear option, the majority would break the rules in order to change the rules. Under the rules of the Senate, it takes 67 votes to change the rules, and 60 votes to end debate on a judicial nominee. But by resorting to this parliamentary gimmick, the nuclear option, the majority would change this rule with only 51 votes.

“The result will be to destroy any check or restraining influence on the power of the majority. This is not the American way. And it certainly is not the wish of the American people.

“In debate at the Constitutional Convention in Philadelphia, James Madison said that the Senate would have two roles: “first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led.”

“But by attacking the filibuster, the Republican leaders would destroy the ability of the Senate to “protect the people against their rulers.” The Senate would lose its capacity to stand up to an out-of-control majority. Instead, the Senate would be turned into a rubber stamp for the majority’s agenda, just as the House is a rubber stamp for the majority’s agenda now. And that would be a betrayal of the Senate’s traditional role, as envisioned by the Founding Fathers.

“The Constitution gave Senators six-year terms so that they wouldn’t bend to the political passions of the moment. I would remind my colleagues of the famous exchange between Thomas Jefferson and George Washington. On his return from France, Jefferson asked Washington at the breakfast table why he favored the creation of a second chamber, the Senate. Washington replied with a question: “Why did you pour that coffee into your saucer?” Jefferson said, “To cool it.” To which Washington said: “Even so we pour legislation into the senatorial saucer to cool it.”

“And for two centuries, that is exactly how the Senate has worked. Because of the tradition of free speech and minority rights – specifically, because of the threat of filibuster -- Senators have a strong incentive to act with moderation and restraint, to make compromises, to accommodate the legitimate concerns of the minority. That is exactly what the nuclear option would demolish.

“Mr. President, the majority party in the Senate – whether Democratic or Republican -- has *always* been frustrated by the minority’s use of the filibuster. But I would submit that frustration is the necessary byproduct of an effective system of checks and balances; it is the price we pay to safeguard minority rights.

“For decades, a determined conservative minority used the filibuster to block civil rights legislation and to deny an up-or-down vote to a liberal Supreme Court nominee, Abe Fortas. Progressives were extremely frustrated by this exercise of minority rights and minority power.

“Now it is the Republicans’ turn to be frustrated by the filibuster. They are frustrated because they can’t get their way on judges 100 percent of the time. They get their way 95 percent of the time on judicial nominees, and not 100 percent – and they believe that this justifies breaking the rules to get rid of the filibuster. I disagree. I submit that the Republicans’ frustration is evidence that the system of checks and balances, here in the Senate, is healthy. It is working exactly as it should.

“In 1995, I proposed to modify Rule 22 in a way that would have given the minority an incentive to limit the use of the filibuster. However, my proposal bore no resemblance to this nuclear option. First, I did not propose to break the Senate rules. I played strictly by the rules. I pursued my rule change through normal Senate procedures, as a floor amendment. It would have taken the requisite 67 votes to pass on the floor, which is entirely appropriate when changing a time-honored Senate rule. By contrast, the nuclear option discards the rules. It would impose the Republicans’ radical change with only 51 votes.

“Ten years ago, I proposed to modify the filibuster rule as a matter of principle. Today, the Republican leadership wants to modify the filibuster as a matter of political expediency, to make it possible to stack the courts with radical judges. They are pursuing unchecked power, the absolute control of all three branches of government. In this context, the filibuster takes on new importance. It is all that remains to check the majority’s quest for absolute power.

“By the way, I note that 24 current Republican Senators actually voted against my proposed change to the filibuster back in 1995. The distinguished Majority Leader, Mr. Frist, was one of those Republicans opposing any change to the filibuster. Indeed, he voted in the year 2000—just five years ago-- to sustain a filibuster of a Clinton nominee, as did many other Republicans.

“The same Republicans who now say that President Bush’s judicial nominees have a Constitutional right to an up-or-down vote on the Senate floor denied that alleged right to scores and scores of President Clinton’s judicial nominees, including a distinguished Iowan, Bonnie Campbell. Ms. Campbell -- a former Iowa attorney general and respected Justice Department official – was nominated for the 8th U.S. Circuit Court, but her nomination was blocked in committee.

“And let’s be clear: If the issue is denying nominees an up-or-down vote by the full Senate, there is no practical difference whatsoever between blocking a nominee in committee and or by filibuster on the floor. During the Clinton years, Republicans blocked judicial nominees again and again and again. They were happy to block Clinton nominees in committee, block them by “blue slip,” or block them on the floor. It didn’t matter, so long as the nominees were denied an up-or-down vote on the floor of the Senate.

“Mr. President, the nuclear option is a flagrant abuse of power. The minority party—the Democrats-- will resist it vigorously, within the rules of the Senate. We have a responsibility, an oath of office, to defend our constitutional system of checks and balances. We have a responsibility to defend the Senate’s unique function as the last bastion of minority rights – and as the last check on an abusive, out-of-control majority.

“But this should not be the responsibility only of minority party. It should be the responsibility of *all* Senators who respect the rules and traditions of this body. It should be the duty of *all* Senators who value our democratic principles, our system of checks and balances, and minority rights. The very nature of the Senate as an institution is at stake. This is a time to look beyond party, to look beyond short-term partisan advantage.

“So I have every hope that there will be enough Senators, Democrats and Republicans alike, to disarm this destructive nuclear option. I have every hope that a critical mass of Senators will be true to the rules and traditions of this body -- and that we will act to preserve the integrity and independence of this great institution.”

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